REMARKS

Claims 1-31 are pending in the present application.

In the Office Action mailed April 4, 2005, the Examiner rejected claims 1-31 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,373,823 by Chen, et al. (hereinafter "Chen").

Applicant respectfully responds to this Office Action.

Applicant asserts that a final action is premature. This final action introduces the first substantive rejection of claim 2. That rejection was omitted in the previous office action, dated August 5, 2005. The Examiner has also failed to substantively reject other claims, in any office action, as outlined below. Applicants request that the Examiner withdraw the final rejection and consider this case on the merits, as detailed below.

The Examiner has failed to set forth a prima facie case of anticipation as laid out in response to the previous office action, and reiterated below.

The Examiner has failed to move the case toward completion. He has neglected to respond substantively to Applicant's response to the previous office action. He writes "In response to claims 1, 14-15, 19-21, 22-25, and 27-31, Applicant's argument that the Chen's reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., calculating, detecting, modifying)." He then fails to state what should be noted. Perhaps he omitted a planned substantive response. Then the Examiner recites his argument from the previous office action virtually verbatim, adding no information that is responsive to Applicant's argument (except for the new objection to claim 2, which had been omitted from the first office action).

Again, as detailed in Applicant's response to the prior office action, and reiterated below, the Examiner has failed to identify the claim limitations taught by Chen for claims 14-15, 19-25, and 27-31. The Examiner also neglects to point out where Chen teaches the limitations of dependent claims 5-12, 16-18, and 22. To be clear, he was utterly silent as to these limitations in his prior office action, and remains silent in the most recent office action as well, despite Applicant's express notification as such.

In response to the Examiner's new grounds for rejection of claim 2, Applicant notes that the cited text (col. 7 lines 61-65) teaches estimating an SIR of the forward link signal. It does not teach using this SIR for a target power level, as recited in claim 2.

To assist the Examiner in differentiating Chen from the present application, Applicant points out the following: Chen teaches "a novel and improved power control system for use in a communication system in which the transmission energy may be gated or capped or closed loop power control commands otherwise ignored without the knowledge of the transmitter of those power control commands." (col. 2, line 66 – col. 3, line 4) This is not the teaching of the present application, nor recited in the pending claims.

Chen describes closed and outer loop power control. "The varying of the signal to interference ratio thresholds based on measured performance metrics is referred to as outer loop power control. The feedback of power control commands based on comparing the measured signal to interference ratio to the variable threshold is referred to as closed loop power control." (col. 3 lines 55-59). Thus, for example, a mobile station sends power control commands to a base station (closed loop) to attempt to converge the power level received from the base station to a target (see col. 3, lines 13-26). The outer loop is performed by setting the target to accommodate a desired performance level (see col. 3, 33-34). Both outer and closed loop power control, as stated in Chen, are well known in the art. (see col. 3, 60-65)

With this in mind, it can be seen that element 64 of FIG. 3 in Chen does not detect wind-up, as the Examiner states, but rather performs closed loop power control, by comparing the received SIR (element 62) with a threshold (element 70). The same description applies to step 108 of FIG. 4 and col. 9, lines 21-29, as well.

For illustration, not intended to limit the claims, consider one example embodiment of a wind-up detector as detailed in the present application (see paragraph [1039]). In this illustration, wind-up is detected by comparing the outer-loop target to the measured SIR, and wind-up is declared detected when those measurements have diverged beyond a wind-up margin. Chen does not teach or suggest such an embodiment.

The standard for anticipation under §102 requires "the presence in a single prior art disclosure of all elements of a claimed invention arranged as in that claim." Carella v. Starlight Archery & Pro Line Co., 804 F.2d 135, 138, 231 U.S.P.Q.D (BNA) 644, 646 (Fed. Cir. 1998)

(*quoting Panduit Corp. v. Dennison Mfg. Co.*, 774 F.2d 1082, 1101, 227 U.S.P.Q. (BNA) 337, 350 (Fed. Cir. 1985)) (*additional citations omitted*). As discussed further below, the Examiner has failed to identify each and every claim limitation, as set forth below, and has thus failed to set forth a prima facie case for anticipation.

Regarding claim 1, the Examiner cites various portions of Chen alleged to teach various limitations of claim 1. The Examiner's citations point to no description of the elements of claim 1. For example, as detailed above, the Examiner has failed to point out where Chen discloses calculating a target power level, detecting wind-up of the target power level, and modifying the target power level when wind-up is detected.

As before, with respect to claims 14-15, 19-25, and 27-31, the Examiner has failed to assert that Chen discloses the respective claim limitations, nor cited any portion of Chen that purports to teach the same.

With respect to claim 3, the Examiner points to no disclosure by Chen teaching detecting wind-up comprising comparing a target power level with a function of a measured power level. With respect to claim 4, the Examiner fails to assert that or point out where Chen specifies a function comprising filtering a measured power level.

With respect to claims 5-12, 16-18, and 22, as described above, the Examiner has failed to point out where Chen teaches each limitation of the respective parent claims, and thus Chen fails to disclose the dependent claims as well. Further, the Examiner's citations fail to point to disclosure in Chen describing the various limitations in the respective claims listed.

With respect to claim 26, the Examiner asserts that " it is inherent that the technique has been disclosed by Chen can be used in either mobile station or base station." As stated in Trintec Indus., Inc v. Top-U.S.A. Corp., 295 F.3d 1344 (Fed. Cir., 2002):

> A single prior art reference anticipates a patent claim if it expressly or inherently describes each and every limitation set forth in the patent claim. *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2D (BNA) 1051, 1053 (Fed. Cir. 1987). Inherent anticipation requires that the missing descriptive material is "necessarily present," not merely probably or possible present in the prior art. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2D (BNA) 1949, 1950-51 (Fed. Cir.

1999) (*citing Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2D (BNA) 1746, 1749 (Fed. Cir. 1991)).

As recited in claim 26, the wireless communication device of claim 24 is not inherently a base station. For example, the wireless communication device of claim 24 may be a mobile station, as recited in claim 25. The Examiner's use of the principle of inherency is inapt in this context.

Thus, Applicant respectfully asserts that none of claims 1-31 are anticipated under §102(e) by Chen. As such, Applicant respectfully requests that the Examiner withdraw the objections.

PATENT

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: 6/30/05

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